

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 1:17-cr-034
Also 1:20-cv-359

- vs - District Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

ANTHONY WHITMIRE,

Defendant. :

**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS
AND DIRECTING THE UNITED STATES TO ANSWER**

This criminal case is before the Court on Defendant's Objections (ECF No. 37) to the Magistrate Judge's Report and Recommendations (ECF No. 36) recommending that Defendant's Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 34) be dismissed with prejudice.

Having considered the Objections, the Magistrate Judge believes this case should not be decided at the Rule 4 stage, but only after briefing. Accordingly, the Report and Recommendations are WITHDRAWN and it is hereby ORDERED that the United States Attorney shall, not later than July 1, 2020, file an answer conforming to the requirements of Rule 5 of the Rules Governing § 2255 Cases. Specifically, said answer shall respond to each allegation made in the Motion and the arguments made in the Objections, raise any affirmative defenses available to the United States, and state whether Defendant has previously received an evidentiary hearing on any of the matters

he now raises or whether he is entitled, in the Government's view, to an evidentiary hearing in this proceeding.

Defendant may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer.

June 1, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge